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May 16, 2019

Mark Kelly
Commissioner
Department of Cultural Affairs and Special Events
121 N. LaSalle St.
Chicago, Illinois 60602

Re: **Millennium Park Rules**

Dear Commissioner Mark Kelly:

We represent four Wheaton College students who desire to evangelize at Millennium Park through non-amplified speech and distribution of free religious literature. Three provisions in the Millennium Park Rules, put into effect on April 2, 2019, thwart our clients' ability to deliver, and other Park visitors from hearing, their message. We request the Department of Cultural Affairs & Special Events change these rules to allow the customary vibrant, colorful, energetic and vigorous exchange of ideas that have always characterized America's best public spaces.

Section P(1) begins, "[a]ny conduct, even if not specifically noted by these rules, is prohibited in the Park if it interferes with or disrupts another visitor's peaceful enjoyment of a performance or amenity in the Park..." We request the elimination of the word "amenity." Unlike a performance which is an active object of one's attention, an amenity is a passive object. Concert attendees are actively engaged in an event from which they understandably do not want to get distracted, e.g., listening to lyrics or a guitar solo. An artist or actor who is performing certainly wants to be seen and hear without distraction. In contrast, passive amenities in Millennium Park, like the Bean, art work, and open grassy areas, are permanent aspects of which do not offer the same kind of active engagement as a concert. Visitors at the Bean who want to enjoy the reflection of Chicago's skyline will not miss it because they turn their heads for a few seconds. The skyline's reflection off the Bean will still be there, does not change, and visitors can visit the Park's amenities as often as they want.

In essence, section P(1) creates a Heckler's Veto. Under current language, a politically conservative Park visitor can bar another visitor's free speech right solely for speaking positively about Bernie Sanders. To the conservative, hearing advocacy of Democratic-Socialism

could be enough to disrupt their enjoyment of the Park's amenities. A visitor who would explain, "My family was taking a picture at the Bean and were enjoying ourselves until this guy started handing out offensive political materials" would have a valid complaint under the Rules but not under the Constitution. Irritation or annoyance of some opinionated minority is unavoidable in public spaces and is never enough to prohibit someone from exercising their First Amendment rights both to express and to hear ideas wonderful and ridiculous. The City should not create the kind of restrictions whereby people are only capable of exercising free speech with which no one disagrees. And given the size of Millennium Park, a few people speaking and handing out free literature with a 30 foot radius or moving radius disrupts very little. People can ignore the speaker, refuse the literature or walk away. 24.5 acres is space enough for everyone.

Next, we ask the Department to eliminate section P(4). This provision labels sections of the Park as "rooms" apparently to justify application of Limited Public Forum restrictions by prohibiting speeches and the distribution of free written communications in all sections but Wrigley Square or sidewalks. Public parks are expressly recognized as the *quintessential* Traditional Public Forums in multiple court decisions because they are inherently a space where people assemble and communicate. At public parks, people walk and talk to each other morning, noon, and evening. They walk alone, in pairs, in families and in large groups. They are free to enter, free to leave. They can stay for 20 minutes or an hour. They can play Frisbee on the grass or gaze at stars. Many if not most parks in America (certainly the larger ones) have art work and statutes which people are free to enjoy. If park visitors want something more restrictive, they can always go to multiple museums, a restaurant, offices, shops, or hotels. Does not Millennium Park fit within the preceding description of a public park? If so, how does a novel designation of most of the Park as "rooms" change this underlying reality? Is not the use of "rooms" really just a backdoor approach to allow Park District officials the authority to limit First Amendment rights?

The well-established and cherished right to speak and offer free literature is often summarized as, "where the public is free to walk, it is free to talk." The Rules' abstract use of the word "rooms" not only encroaches on the First Amendment for those who want to speak, but also for visitors who desire to hear different points of view. We believe the City cannot reclassify a Traditional Public Forum as a Limited Public Forum simply through semantics. Our First Amendment rights are too important, especially in the most visited attraction in the country's third largest city. The more people, the more important it is to protect the free speech rights of all Americans. Please eliminate section P(4).

Third, we ask the Department to eliminate section P(3). This section requires the Wheaton College students and all other visitors to obtain permission to share their message. Whether P(3) applies to all of Millennium Park or all of Millennium Park except Wrigley Square and the sidewalks is unclear. However, these questions, unanswered in the Rules, highlight the burden which the Rules impose on free speech.

1. How do visitors know about the permit requirement? Will Millennium Park post signs?
2. Where does one go to get a permit?
3. How long will it take to get a permit?
4. What if the office is closed or the permit grantor has gone to lunch?

5. On what basis can a permit be denied or granted?
6. What if the permit is denied?
7. People sometimes do things casually or spontaneously. Does that mean they cannot hand out Gospel or Bernie Sanders literature as they stroll through the Park?

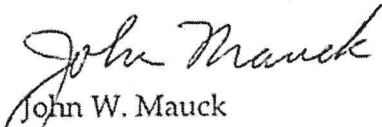
Beyond unforeseen issues that could arise with the Rules' permit requirement, why would Chicago need to grant permission to speak once its rules are clear and constitutional?

In summary, we request the Chicago Department of Cultural Affairs & Special Events amend the Millennium Park Rules in three ways. First, we ask the Department to eliminate "amenity" from section P(1) for its vagueness and the Heckler's Veto it necessarily affords. Next, we ask the Department to eliminate section P(4) entirely for its illegal classification of a public area where people have always been free to speak and listen into one where they must get prior permission by applying Limited Public Form restrictions based on semantics. Finally, we ask the Department to eliminate section P(3) because of the burden required to receive permission and the subjectivity of regulation for speech and communication in a Traditional Public Forum.

Commissioner Kelly, we would appreciate a response by June 3, 2019. Thank you for your consideration.

Very Truly Yours,

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